IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

Bail Appl..No. 3945 of 2007()

CRMP.1112/2007 of DISTRICT COURT, PATHANAMTHITTA

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(CRIME NO.173/2007 OF RANNY POLICE STATION)

: PETITIONER

JYOTHI P.G., AGED 23 YEARS,
S/O. GOPALAN NAIR, PATHAKKU HOUSE,
MANDIRAM P.O., RANNY, PATHANAMTHITTA DISTRICT.

BY ADV. SRI.C.B.SREEKUMAR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE SUB INSPECTOR OF POLICE, RANNY POLICE STATION,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.3945 Of 2007

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Dated this the 29th day of June, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused who faces allegations under Section 353 read with 34 IPC. The petitioner and three other identifiable persons have been arrayed as accused in the FIR.

2. The crux of the allegations is that at 10 p.m. on 20.05.07, when a cultural program organised in the premises of a school in connection with the inauguration of the new building block in the said school was going on, the petitioner allegedly assaulted the local Sub Inspector of Police, who was on law and order duty at the said meeting. Investigation is in progress. The petitioner apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Inasmuch as, the allegation is that petitioner was assaulted by the Sub Inspector of Police, he apprehends physical harm, if he were to surrender before the learned Magistrate. Therefore appropriate directions may be issued invoking the extraordinary equitable discretion under Section 438 Cr.P.C.

4. The learned Public Prosecutor opposes the application. It is

submitted that another crime has been registered and proceedings initiated under Section 107 Cr.P.C against the petitioner. There are no circumstances justifying invocation of the extraordinary equitable discretion under Section 438 Cr.P.C, submits the learned Public Prosecutor. The learned counsel for the petitioner in reply submits that proceedings under Section 107 Cr.P.C has been initiated after registration of crime in question, thereby confirming the worst apprehensions of the petitioner.

5. Having considered all the relevant inputs, I am satisfied that appropriate directions can be issued under Section 438 Cr.P.C. In the peculiar facts and circumstances of the case, I am of the opinion that petitioner deserves to be granted an opportunity to surrender before the learned Magistrate and seek regular bail without the threat and risk of harm, if he were to appear before the local Sub Inspector of Police.

In the result this petition is allowed in part, following the directions under Section 438 Cr.P.C.

i) The petitioner shall appear before the Learned Magistrate having jurisdiction at 11 a.m on 07.07.2007.

ii) If the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor

in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously-on the date of surrender itself.

iii) If the petitioner does not surrender before the learned Magistrate as directed in clause (i), all directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with them in accordance with law.

(R.BASANT, JUDGE)

sj